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In re Application of:
De NORA, Vittorio, et al. :
U.S. Application No.: 10/530,884 : DECISION ON PETITION
PCT No.: PCT/IB2003/004649 :
International Filing Date: 17 October 2003 :
Priority Date: 18 October 2002 :
Attorney Docket No.: MOL-0672 :
For: ALUMINUM ELECTROWINNING :
CELLS WITH METAL-BASED :
ANODES :
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This decision is issued in response to the "Letter/Petition To The PCT Legal Office" filed 16 March 2010, treated herein as a petition under 37 CFR 1.181 to withdraw the holding of abandonment. No petition fee is required.

BACKGROUND

On 17 October 2003, applicants filed international application PCT/IB2003/004649. The international application claimed a priority date of 18 October 2002, and it designated the United States. Pursuant to PCT Rule 4.17(iv), the international application as filed included a declaration executed by the three inventors of record.

On 29 April 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 18 April 2005.

On 11 April 2005, applicants filed a Transmittal Letter requesting entry into the national stage in the United States accompanied by, among other materials, payment of the U.S. basic national fee.

On 15 August 2005, the DO/EO/US mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) stating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required.

Applicants did not file a response to the Notification Of Missing Requirements during the available response period. Accordingly, on 25 July 2006, the DO/EO/US mailed a "Notification Of Abandonment (Form PCT DO/EO/909) indicating that the application was abandoned for failure to respond to the Notification Of Missing Requirements mailed 15 August 2005.

On 16 March 2010, applicants filed the Letter/Petition To The PCT Legal Office" considered herein as a petition under 37 CFR 1.181 to withdraw the holding of abandonment. The petition argues that the Notification of Missing Requirements was issued in error and that the holding of abandonment is therefore inappropriate.

DISCUSSION

37 CFR 1.497(a) states the following: "When an applicant of an international application desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.495, and a declaration in compliance with this section has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26ter.1, he or she must file an oath or declaration."

In the present application, applicants timely filed a fully executed declaration under PCT Rule 4.17(iv) during the international phase (the declaration was submitted with the original international application on the international filing date). Accordingly, pursuant to the terms of 37 CFR 1.497(a), an additional declaration was not required upon entry into the national stage in the United States.

In view of the above, the Notification Of Missing Requirements mailed 15 August 2005, which required submission of a declaration in compliance with 37 CFR 1.497, was issued in error and is hereby appropriately vacated.

The Notification Of Abandonment mailed 25 July 2006, based as it was on applicant's failure to respond to the now vacated Notification Of Missing Requirements, is also appropriately vacated, as requested by applicants in the present petition.

CONCLUSION

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **GRANTED**.

The Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed August 15, 2005 and the Notification of Abandonment (Form PCT/DO/EO/909) mailed 25 July 2006, are hereby **VACATED**.

This application is being referred to the National Stage Processing Branch of the Office of PCT operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 11 April 2005.

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